

STATE OF ALASKA

COMMISSION ON JUDICIAL CONDUCT

In the matter of the proceeding)
pursuant to A.S. 22.30.011(a) in)
relation to:)

RICHARD W. POSTMA, Jr.)

) **ACJC File No. 2010-005**
) **(referencing but not**
) **incorporating closed file**
) **#2009-004)**

Judge of the District Court,)
Third Judicial District at)
Anchorage, Alaska)

To: Richard Postma
c/o Thomas Van Flein
711 H Street, Suite 620
Anchorage, Alaska 99501

COMPLAINT

The Alaska Commission on Judicial Conduct pursuant to Article IV, sec. 10 of the Constitution of the State of Alaska, AS 22.30.011, and Rule 11 of the Rules of the Alaska Commission on Judicial Conduct charges that Judge Richard Postma, engaged in the following conduct that violates of AS 22.30.011 (a) (2) and/or AS 22.30.011 (a) (3) (B) (C) (D) and (E), Canons 2A, 3A, 3B(4), and 3C(1) and the confidentiality provisions of AS 22.30.060.

(1) From February 2009 through April 2010, Judge Postma, in response to perceived inequities in his case assignments and other administrative matters, engaged in e-mail correspondence and in-person confrontations with fellow judges and court staff that exhibited a level of anger and lack of judgment inappropriate to the judicial office. This conduct creates an appearance of impropriety by acting in a manner that does not promote public confidence in the integrity of the judiciary in violation of Canon 2A; violates Canon 3 B(4) through lack of patient, dignified and courteous conduct; and violates Canon 3 C(1) by failing to cooperate with other judges and court staff in the administration of court business. This conduct also constitutes willful misconduct in office, conduct prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute in violation of AS 22.30.011(a) (3) (A), (C) and (D).

(2) Judge Postma has personal needs that include personal work requests, which would require unreasonable accommodations by the court system. These personal needs violate Canon 3A because they take precedence over the judge's judicial duties.

(3) Judge Postma circulated and shared the fact that he filed complaints with the Commission on Judicial Conduct against two other judges, violating the confidentiality requirements of AS

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22.30.060 and constituting willful misconduct in office, conduct prejudicial to the administration of justice, and conduct that brings the judicial office into disrepute in violation of AS 22.30.011 (a) (3) (A), (C) and (D) and Canon 2A by failing to exhibit respect for the rule of law and comply with the law.

(4) Judge Postma suffers from a combination of mental health difficulties as outlined by Commission independent mental health expert Dr. M. Milner's evaluative reports of April 6, and April 21, 2010, that render him likely to be unable to fulfill the duties expected of a district court judge in Anchorage. The findings of a Commission-required independent mental health exam indicate that the judge's impairment is likely to impede his ability to function appropriately within the workplace with colleagues, peers and staff, establishing a disability that seriously interferes with the performance of duties and is or may become permanent.

Commission Rule 11(b)(4) requires that a response be filed within twenty days.

Dated at Anchorage, Alaska this 30th day of April 2010.

ALASKA COMMISSION ON JUDICIAL CONDUCT

By: Ben Esch

Honorable Ben Esch
Chair

BY ORDER OF THE COMMISSION

Complaint
Page 3 of 4

EXHIBIT 1

page 3 of 4

Case No. _____

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RETURN

I served the above Complaint constituting a statement of formal charges on Judge Richard Postma, the person to whom it is addressed, on the 4th day of May, 2010, by certified mail to his attorney Thomas Van Flein.

Lauren Fee
Signature

Administrative Assistant
Title

Lauren Fee
Name

MARNEE W. MILNER, J.D., PH.D.
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PSYCHOLOGICAL EVALUATION

NAME: Richard Postma, Jr.
DOB (AGE): 06/04/1966 (43)
DATE OF TESTING: 03/24/2010, 03/26/2010
DATE OF REPORT: 04/06/2010

IDENTIFYING INFORMATION: Judge Richard Postma, Jr. is a 43 year old, married, right handed, Hispanic male with 19 years of formal education. He is a Judge with the District Court in Anchorage, Alaska. Judge Postma lives with his wife and three daughters.

REASON FOR EVALUATION: On August 27, 2007, Judge Postma was appointed to the District Court in Anchorage. According to Judge Postma, immediately thereafter he started to experience disparate treatment by the Court Calendaring Department, specifically Jill Kolberg, the supervising clerk. On February 10, 2009, Judge Postma filed a grievance against Ms. Kolberg for insubordination, poor work performance, harassment and retaliation, and underlying racial motivation. He filed a grievance against Judge Hanley for slow response to Judge Postma's concerns suggesting condonation or approval of calendaring's behavior. The grievance against Judge Hanley was stayed after a mediation session between the judges. On March 5, 2009, Ms. Kolberg filed a complaint against Judge Postma with the Alaska Commission on Judicial Conduct. On July 8, 2009, Judge Postma revived the grievance against Judge Hanley. Lee Powelson, HR Director of the Alaska Court System investigated the issues between calendaring and Judge Postma. His report dated July 15, 2009 found that neither complaint was supported by clear evidence and that personality conflicts have created a complete breakdown in communication. Judge Postma then filed a complaint with the EEOC on September 11, 2009.

At the end of September, Judge Postma was granted his requested administrative leave for 6 weeks to prepare for the upcoming Commission hearing. On September 29, 2009, Nancy Meade, Court Rules Attorney, submitted her investigatory report regarding the remainder of Judge Postma's complaints. She found a lack of prima facie evidence of racial discrimination, retaliatory conduct, disparate treatment or harassment. The Commission and Judge Postma entered into a written "Agreement for Monitoring Pending Complaint Disposition" signed November 13, 2009. At the end of his administrative leave, Judge Postma took a temporary District Court position in Palmer.

On March 10 2010, the Alaska Commission on Judicial Conduct (ACJC) requested an independent psychological evaluation to determine whether any mental health issues impede Judge Postma's capacity and competency to perform the functional duties of a judicial officer and if there exists a potential for behavioral improvement.

EVALUATION PROCEDURES: In a written document, the following information was provided to Judge Postma and the ACJC: the evaluator's role, the nature of the forensic examination process, that the

examination was not therapy, and that forensic evaluations are not confidential or covered by therapist-patient privilege. Both Judge Postma and ACJC indicated that they understood and agreed to the above by signing the necessary consent form. Judge Postma also signed a release of information.

Readers of this report should be aware that given the extensive amount of information provided, this report is likely to contain some inaccurate and/or contradictory information. The information presented here is to inform the reader of the data reported to the examiner, not to assert its truthfulness or accuracy. Presentation of any statement in this report does not necessarily mean that the statement is factual nor that each statement presented was accorded equal weight by the evaluator.

Judge Postma was evaluated over two sessions.¹ The evaluation included forensic interviews, behavioral observations, psychometric testing, cognitive testing, collateral interviews and a review of records.

RELEVANT BACKGROUND

EDUCATIONAL, OCCUPATIONAL AND SOCIAL HISTORY:

Judge Postma was born in Lexington, Kentucky, the eldest of five children. Judge Postma's father holds a doctorate in physics, worked with NASA and then as a geophysicist in the oil industry; his mother was born in Chile, earned her masters degree and worked as a bilingual high school teacher. The children learned to speak English with their mother who had broken English. During his childhood, Judge Postma moved frequently because of his father's career: Houston, Texas (in 1st grade), Bogota, Colombia (in 2nd grade), Slidell, Louisiana (in 5th grade), Colorado (in 6th grade), and Houston, Texas (in 12th grade). His parents remain married, and live in Colorado where all of his siblings also reside. He currently sees his family at least once a year.

Academically, Judge Postma earned above average grades, although when the family returned to the United States after 3 years in Colombia, the school wanted to hold all of the children back a year because of their English abilities. At this time, Judge Postma's mother threatened to sue the school and the children were placed in remedial English for one year. His mother then demanded that only English be spoken in and out of the home. Currently, Judge Postma understands Spanish but does not speak or write. His children, however, are bilingual.

After high school, at age 19, Judge Postma joined the Army and served for 2 years, without deployment. Through an ROTC scholarship, he attended the University of Colorado and then the University of Denver Law School. Immediately following law school, Judge Postma worked in the Jefferson County (CO) Attorney's office. From 1995-2000 he worked for the US Army Judge Advocate General's Corps (JAG) with assignments in Texas and Alaska. He left the JAG Corps to diminish the frequent relocations for the sake of his children.

Judge Postma continued to practice employment law and insurance defense with two private firms in Anchorage. In 2003 he applied for a judicial position in Palmer but after speaking with Larry Cohn of the Judicial Council, Judge Postma withdrew his application because he was too new in the community, not well known and in his current position he alienated the insurance companies. Judge Postma then worked for the Attorney General's (AG) office, the "best job [he] ever had." During his tenure with the AG's office, Judge Postma practiced employment law, appellate law and "odd ball" cases. The schedule in the AG's office was intense. He repeatedly volunteered for additional jobs or cases and prided himself on efficient time management abilities. Judge Postma

¹ See Appendix A for a complete list of evaluation procedures, dates and approximate times.

successfully defended two governors, and received positive reviews from his boss who suggested his success in a judicial position. In August 2007, Mr. Postma was installed as a District Court Judge in Anchorage.

Judge Postma has had no legal involvement, and no suspensions or disciplinary actions from academic, military or employment positions other than the current workplace situation. Although Judge Postma proudly stated that his awareness and insight into the master calendar helped secure his judicial appointment, he did not expect the daily resistance and hostility from staff creating a toxic environment.

Socially, the frequent relocations as a child were difficult. He had to learn flexibility and how to make new friends after the initial "odd man out" phase in each new city. His most difficult transition was in Louisiana where he was teased and called names and racist phrases including but not limited to "Ricky Ricardo," "Wetback," "Ricky Retarded," and "Illegals go back." This lack of social acceptance, limited friends, and cultural teasing created a self-reported poor self esteem; however, he then reportedly overcompensated when they moved to Colorado by excelling in sports and academics. Currently, Judge Postma keeps in touch with friends from high school and college, both in person and through Internet sites such as Facebook. While at the AG's office, Judge Postma regularly socialized with his colleagues after work. He plays soccer two nights a week and frequently interacts with the other parents from his daughters' extracurricular events and school.

Judge Postma met his wife, also an attorney, in the JAG Corps in 1995. He described their relationship as good, but it has slowly deteriorated because of the dispute with scheduling. He and his wife could not rely on the calendar, which then created tension regarding childcare and soon became all consuming for Judge Postma. As the situation continued to escalate in Anchorage, the financial pressures also increased because of the potential loss of employment, which added to the tension between the couple.

Judge Postma recalled two other overt incidents of racism. The first was in the JAG Corps when he was called a "Fucking Jew lawyer." The second was in Alaska when the opposing counsel called him a "Fucking Spic." This last incident made him very mad such that he "saw red." He talked to his boss and decided to take himself off the case because he did not want his client to suffer. Judge Postma stewed on the incident for approximately one month but then started to feel sorry for the opposing counsel. He acknowledged that racism is a "raw spot."

MEDICAL HISTORY: Developmental history was reportedly normal. Medical history includes stuttering and speech therapy in kindergarten or first grade, color blindness, Tinnitus, right MP joint Ganglion cyst, high blood pressure. No known loss of consciousness or head injury. On or around March 19, 2010, Judge Postma participated in a second sleep study for sleep apnea. Currently he sleeps 5-6 hours a night with difficulty falling asleep and restless sleep.

SUBSTANCE USE: Judge Postma drinks approximately 1 to 2 beers a week. He drinks one 20 ounce cup of coffee daily. No over the counter or illicit drug use; No cigarette or tobacco use.

CURRENT MEDICATIONS include Lexapro (10mg), Propanolol (30mg prn), Ambien (10mg prn) and Sonata (10mg prn). He takes Sonata about every other night and Ambien irregularly. One prescription of Sonata lasts approximately 2 months, while one prescription of Ambien lasts approximately 3-4 months. Of note, Judge Postma does not believe the medication to be effective and would like to discontinue. He did not take any sleeping medication in December 2009 while on vacation in Mexico with his family.

FAMILY HISTORY: Negative for neurologic disorders. His mother has been in treatment for depression and diabetes.

NEURODIAGNOSTIC WORKUP: No known imaging or neuropsychological results were available. Labs results as of 05/28/2008 revealed high cholesterol, triglycerides, LDL.

MENTAL HEALTH HISTORY: Judge Postma believes that he may have had anxiety issues for the majority of his life. Anxiety pushed him to study, to prepare and to succeed in academic and employment tasks. He is inability to relax until all tasks are complete and unfinished business creates anxiety and obsessive thinking. However, he attributed such anxiety, in part, to his military training in which he was taught to complete all tasks on a daily basis and not to "shirk work." Judge Postma also reported stage fright or some mild anxiety prior to a football game or right before taking the bench. Once the activity begins, however, the anxiety dissipates.

In 2000 while driving with his family, a small child ran into the road. Judge Postma hit and killed the boy and nearly killed his own family in the crash. For two weeks he experienced panic attacks, nightmares and intense sadness. Thereafter he expressed sadness about the event and at times will think of the incident when driving. He did not seek psychotherapy after this incident but saw his PCP, Eric Milknich, MD, who diagnosed "PTSD type of condition that developed into a depressive disorder" and prescribed Paxil and Wellbutrin. Although Judge Postma viewed his symptoms as more related to anxiety than depression, he continued to see Dr. Milknich and titrated off medications in 2001. During this time, Judge Postma continued to work and perform all activities of daily living in accord with his normal level of functioning.

Judge Postma returned to Dr. Milknich in May 2008 for insomnia and increased irritability. He was prescribed Cymbalta (30mg) and Ambien (10mg prn). Two weeks later the Cymbalta was increased to 60mg/day. In February 2009 after a number of poor interactions with calendaring, Judge Postma experienced extreme shaking, sweating through his shirt and an overall feeling of sickness. He tried to return to the doctor, but had a difficult time with scheduling (because calendaring refused to grant leave) that his anxiety continued to increase. Contrary, in May 2009 Judge Postma felt better when he attended a judicial conference in Reno, away from calendaring.

Two additional periods of time were reported in which Judge Postma experienced panic attack type symptoms: May 2009 and September 2009. First, on May 15, 2009, panic symptoms, including a lump in his throat, extreme sweating under his robe, shaking hands, and feelings of nausea, occurred during a 118 disposition hearing morning docket. This was the first time presiding over dispo hearings. After he completed the docket, he was upset with calendaring for scheduling such a large number, but he also thought "Screw you Jill, I beat you." He now knew how to do this type of hearing and thought of ways he could make the system and schedule better in the future.

Second, in September 2009, when Judge Gleason called Judge Postma into her office and accused him of scaring a coworker on the elevator, he reported that he was in shock, could not talk, heard rushing in his ears, was light headed, and felt nauseous. Around this time and upon Judge Rhoades suggestion, Judge Postma started seeing psychiatrist, Eileen Ha, M.D. every 3 weeks and psychologist Ann Stockman, LCSW, Ph.D.

At this time, Judge Postma endorsed decreased sleep, concentration difficulties, repetitive thoughts, feeling withdrawn, fearful, tense and anxious. Repetitive thoughts about work and how he could fix problems occur at all times, even when trying to relax, which then lead to feelings of agitation. Relief from these thoughts occurs by responding to e-mails and "standing up" for himself. He also

reported low energy, feeling exhausted and altered eating habits during the day for fear he will be ill. When stressed or anxious, taking a walk helps him breath and release some tension.

CURRENT SITUATION

Factual disputes or incidents will not be restated herein since they are documented in numerous reports, grievances, claims and responses. This section will solely describe how Judge Postma thinks and feels about the current circumstances, returning to Anchorage and his job.

Judge Postma feels angry and misunderstood. His boss laughed at him, the court system continues to monitor and check-up on him², and he feels consistently in a position in which he needs to defend himself. Judge Postma expressed helpless as if there is nothing he can do to correct the current situation. He feels obsessed with the future because he never knows when he will have to defend against the allegation that he is dangerous even though he denied any physical altercations with others. When angry or upset, Judge Postma speaks with his hands, sighs heavily and is very expressive. Once in awhile he may raise his voice, but he does not curse or throw objects. He acknowledged needing to keep more of a "poker face." Judge Postma has never had problems with prior employers or with the law and this situation does not make him feel good.

The judge acknowledged that e-mail was not the best form of communication, but he felt that his bosses (Judges Hanley and Gleason) refused to intervene so he had to be a little harsh in his responses. He acknowledged that his e-mails probably exacerbate the situation and stated that he would be offended to receive an e-mail like what he has written. However, he spent a year underreacting so his e-mails, starting in 2009, were direct, albeit terse, with strong content³. Judge Postma stated that he may disagree with Judge Gleason but that does not mean he disrespects her. Conversely, all communications in Palmer were in person without any problems.

Judge Postma does not understand why each judge cannot control his/her own calendar. With the next day's face sheet published between 3:30 - 4:00 p.m. each day, sometimes Judge Postma does not have an opportunity to address the necessary scheduling issues by the close of business day. This leaves uncertainty and at times conflict for the next day. Judge Postma likes to be prepared for hearings rather than "shoot from the hip."

Judge Postma would like to save his job and his reputation. He has always wanted to be a judge. If he could turn back time he would simply want someone to go to calendaring and tell them to "cool it." At this junction, he believes Judges Hanley and Gleason spend their time destroying his reputation and he would like Judge Gleason and Judge Hanley to issue an apology stating that they were wrong. Even with an apology, Judge Postma questions how he can gain back his reputation. He wishes he could stay at Palmer where there is mutual respect and cooperation among the judges. The Palmer Court is how Judge Postma envisioned his job.

RESULTS

BEHAVIORAL OBSERVATIONS

Judge Postma presented as pleasant and cooperative, although at times he verbally expressed (in an appropriate manner) his dissatisfaction with this mandated evaluation. Affect was appropriate with normal modulation and range. Mood was dysphoric or sad at times. At various times

² In March 2010 an in-court in Palmer was asked if she felt threatened or if she had an inappropriate relationship with Judge Postma.

³ For example, Chris Christenson needed a "shock to his system to do the right thing." Judge Postma believes that if he had not responded to Chris in this manner, Chris would still be overseeing the investigation despite his conflict of interest.

throughout the interviews and testing, Judge Postma covered his eyes with his hands, cried, and stated he was "embarrassed" and "humiliated." Each time this occurred he tried to regain composure quickly but remained visibly upset for a few moments. For the first interview Judge Postma arrived 15 minutes early and paced outside the office. In the office, his hands shook and he sweated through his shirts under the arms. During the interview he became visibly upset when he thought that his old colleagues and peers walking on the street or in the building across the street could see into the office where we sat. There was a mild sense of hopelessness and defeat when speaking about regaining his job, his reputation and his relations with colleagues.

Judge Postma was oriented x4. Speech was normal as to volume, production, comprehension and content. He maintained good eye contact and appeared forthcoming with information. No indication of delusions⁴, hallucinations or loose associations. He denied any intent to harm self or others. No mannerisms or postures or other unusual behavior were detected. Judge Postma worked diligently throughout the examination and appeared to put forth his best effort across a wide range of tasks. Embedded measures of symptom validity confirm good effort. The current test results and overall assessment are therefore believed to be a valid estimation of his current level of neurocognitive and personality functioning.

GENERAL COGNITIVE FUNCTIONING: Judge Postma's Full Scale IQ was in the very superior range. Verbal Comprehension Index and Perceptual Reasoning Index were very superior; Working Memory Index was high average and Processing Speed Index was average. Relative weaknesses (although still with a score of average or above average respectively) were symbol search, a processing speed task and digit span, an attention and working memory task. Estimated pre morbid functioning based on history, education and demographics was high average. His current level of functioning does not indicate any decline in functioning and appears congruent with pre-morbid (pre-2009) levels of functioning.

EXECUTIVE FUNCTIONS: On nonverbal and verbal abstract reasoning Judge Postma performed in the superior range. On visual scanning task of conceptual switching, mental flexibility and graphomotor speed, Judge Postma performed in the average range. However, when the tasks were separated out (e.g. visual scanning, or number sequencing or letter sequencing), he performed in the high average range. Similarly, on a controlled word fluency task with a set of rules guiding his answers, he performed in the low average range as compared to superior performance on a semantic fluency task without a strict set of rules. In addition, he demonstrated mild impairment in terms of repetition errors. In sum, when tasks involve rules and cognitive flexibility Judge Postma's performance declines, although it remains within normal limits. However, his tendency to persevere on these tasks was below what would be expected.

MOOD AND PERSONALITY:

Judge Postma was administered the MMPI-2, a personality inventory composed of true-false questions which demonstrate a phenomenological report of personality and the PAI, a personality inventory composed of a Likert scale (true, mostly true, sometimes true, false) questions. Both inventories consist of validity and clinical scales to assess test-taking attitudes and psychopathology, if any. Psychological test results presented below are only hypotheses and should not be used by the reader of this report in isolation from other information in this matter.

Judge Postma endorsed items consistently and accurately. He reported moderate to severe emotional distress that is characterized by excessive worry, nervousness, brooding, dysphoria, and

⁴ Aside from his fixed belief about calendaring and Judges Hanley and Gleason

anhedonia. He reports more interpersonal sensitivity, being moody and reactive such that his feelings will be hurt more easily. Judge Postma reported difficulty with attention and concentration. He endorsed obsessive depressive thoughts, hopelessness and getting bogged down in details, but also an inflated self-worth that may emerge when emotionally driven. He reported concern about physical malfunctions such as gastrointestinal symptoms and disturbed sleep. Judge Postma attempts to cope with the problems and continues to function adequately, but he is unsure whether he has adequate resources to successfully deal with the anxiety and interpersonal distress.

Although Judge Postma elevated a scale that includes items such as persecutory ideas, feeling guarded, sensitive, argumentative and blaming others, this scale is frequently elevated by individuals in workplace discrimination or harassment situations and individuals who elevate this scale are not necessarily perceived as psychotic.

COLLATERAL CONTACTS

The collateral witnesses have not proofread the following summaries.

Teresa Shaw, Clerk of the Court Palmer, described Mr. Postma as the "best judge" Palmer has had from Anchorage. He was helpful, participatory in meetings and overall very pleasant and cooperative. In addition, he was open-minded and consistently inquired about how to correctly and efficiently perform the Palmer procedures. Ms. Shaw received no complaints or negative comments about Judge Postma from the in-courts, judicial assistants, other judges, clerks and attorneys. She heard of no frustrations or uncomfortable feelings about Judge Postma. Ms. Shaw has not witnessed Judge Postma angry. Sometimes his voice fluctuated and became louder to obtain the litigants attention, but it was not angry. According to the judicial assistant, Judge Postma was a bit anxious about events in Anchorage, but not about circumstances in Palmer. On occasion, Judge Postma stated that he really liked the schedule in Palmer because in Anchorage he did not know his next day's schedule until 3:30 p.m.. The entire clerical staff (of 30+ people) planned a going away potluck and many have stated that they do not want him to return to Anchorage.

Judge Vanessa White, Palmer Deputy Court Judge, had little personal interaction with Judge Postma, but described him as pleasant, easy to get along with, smiles a lot, but a little stressed or on edge about issues in Anchorage. In one lunch with Judges White and Kristiansen, when he first arrived, Judge Postma mentioned the general malaise in Anchorage 2-3 times and was redirected to focus on his experience in Palmer. His anxiety level may have increased with this psychological evaluation and his speech was observed to be a bit pressured in a very short snippet of a civil hearing that Judge White listened to. However, the Judge does not give much weight to this short snippet. All court staff like working with him. Judge Postma made a real, sincere effort to get along with others.

Judge Bill Estelle, Palmer District Court Judge, has not witnessed Judge Postma on the bench but was told by a colleague that he was very impressive on the mental health court bench when he spoke directly to a litigant. Judge Estelle reported excellent personal interactions with Judge Postma and thought he should have applied for the Palmer vacancy. Everyone at the Palmer court, from the judges to the in-courts to the clerks, really enjoyed working with Judge Postma. Judge Postma was consistent, solid, nice, smart, helpful, participatory and contributory to the judicial team. Judge Estelle enjoyed talking with Judge Postma about management issues, morale, calendaring issues, and legal analyses. He has not witnessed any frustration or anger and believed Judge Postma enjoyed working in Palmer. Judge Postma spoke generally about the issues of concern in Anchorage, including no control over calendaring, children in chambers and the hiring of a new JA with whom he had past difficulties. He has been mildly frustrated about these issues but

not angry. Judge Estelle was very surprised to hear that the Commission was investigating Judge Postma because any inappropriate behavior would be very out of character.

Judge John Wolfe, Palmer District Court Judge, has interacted with Judge Postma on a weekly basis for the past 3 months. Judge Postma has been friendly, appropriate, and rational. No unusual interactions, no observations of anger or frustration, even during legal discussion and disagreements. Judge Postma also had good relations with all staff who organized a going away potluck.

Judge David Zwink, Palmer District Court Judge, described Judge Postma as jovial, pleasant to work with, gracious, professional, and independent in the sense that he liked his environment organized. Judge Postma appeared to enjoy working in the Palmer environment, which is very cohesive, friendly and interpersonal compared to Anchorage. Judge Zwink had not observed any anger or frustration other than normal tensions for the job.

Judge Patrick Hanley, Anchorage Deputy District Court Judge, has had no personal interaction with Judge Postma since September 2009 with only indirect e-mail communications. Prior to February 2009, Judges Hanley and Postma interacted face-to-face a great deal, which was generally collegial. Judge Postma was described as intelligent and funny.

In December 2008 and early 2009, interactions between the Judges became strained and Judge Postma's became fixated on his conflicts with calendaring. Judge Postma made no attempt to resolve the conflicts and sometimes blocked efforts toward resolution. Although Judge Hanley has no reason to believe Judge Postma would become physically assaultive, Judge Postma's behavior since February 2009 has raised Judge Hanley's concern for his own safety. For example, on 02/11/09, Judge Postma was unable to calm himself down after the two judges disagreed. Judge Postma waited for Judge Hanley outside his courtroom for at least 15 minutes, pointed his finger, moved into Judge Hanley's personal space and stated, "You owe me an apology." Judge Postma then followed Judge Hanley down the hallway and onto the elevator where another judge asked if he was all right. The next day, Judge Postma stated he wanted all communication in writing and then followed Judge Hanley very closely down the underground corridor, which Judge Hanley interpreted as an attempt to intimidate. In June 2009 during one judge's meeting, Mr. Postma threw down his pens and talked about a big fight he had with his wife over the childcare issue.

Judge Postma's behavior also raised concern about professionalism. First, despite large amounts of desk time, Judge Postma failed to complete his caseload prior to transferring to Palmer forcing other judges to write decisions based on audiotapes of his trials, and he set a trial intentionally for other judges to hear despite his intimate knowledge of the case. Second, Judge Postma mischaracterized and/or distorted the truth such that Judge Hanley did not want to engage in conversation for fear of mischaracterizations. As recently as December 2009, Judge Postma sent e-mails at 4:30 or 5:00 a.m. that were factually incorrect. E-mails, dated March 2010, that reference Judge Hanley in an unprofessional manner were sent to all judicial officers and assistants. Judge Hanley had hoped that after he stepped back from Judge Postma's calendaring issues in February 2009, after 7 weeks of time off and then 3 months in Palmer that Judge Postma would have "cooled off." Contrary, Judge Postma continues to focus and vilify both Judge Hanley and Judge Gleason. He remains oppositional but then complains that the other judges made him do something. With Judge Postma's return, Judge Hanley hopes for limited, professional interactions with third parties present.

Judge Gregory Motyka, Anchorage District Court Judge, reported no problems between Judge Postma and the public or attorneys, but difficult interactions between Judge Postma and staff and colleagues. Judge Postma taunted Ms. Kolberg in a judge's meeting, in e-mails his tone has been confrontational to Judge Gleason and Judge Hanley, he responds with "rhetoric designed to exacerbate the situation," and his in-court requested a different assignment. Through friends in private practice, Judge Motyka had heard of similar bizarre past behavior (he referred the undersigned to a letter submitted to the Judicial Council in 2003) and of Judge Postma having a heated verbal altercation with a secretary. Judge Motyka wondered whether Judge Postma's traumatic accident, in 2000, could have altered his interpersonal relations and personality⁵.

Judge Motyka described their position as a great job with not a large amount of stress. Yet, even with large blocks of desk time prior to his transfer to Palmer, Judge Postma was unable to complete his caseload and other judges had to step in. Based on Judge Postma's e-mails and interactions, he seems to have difficulty making decisions or creating solutions to problems and sends mixed messages. Judge Motyka does not understand the fights over "little issues" and does not understand how or why Judge Postma would destroy his career and reputation. When the calendaring issue was raised at a judges meeting, the judges looked at the numbers and did not see the disparate treatment. The misunderstandings and miscommunications with calendaring snowballed and Judge Postma continues to brood while in Palmer or at home and send strange e-mails at random times.

Judge Motyka and at least three other judges have started a 3-month course on self-protection that includes how to handle a gun. He is concerned that in light of Judge Postma's military background and his unpredictability, when antagonized Judge Postma may be willing to physically respond.

Judge Sharon Gleason, Presiding Judge Third Judicial District, described the duties of a judge as a threefold ability to work: (1) effectively with the public, (2) with colleagues, especially given a master calendaring system, and (3) with staff. Overall Judge Postma has been acceptable to above acceptable on working effectively and intelligently with the public and providing judicial decisions. His relationship with other judicial officers and staff in Anchorage has eroded, although he has been doing very well in Palmer. Prior to February 2009, Judge Gleason's interactions with Judge Postma were sporadic, but professional and "great." Judge Gleason recalled annoyance with both calendaring and Judge Postma because neither made an attempt to resolve their conflict. A neutral Judge (Shortell) agreed with the calendaring concerns of Judge Postma but each of the other 9 judges independently spoke with Judge Gleason in support of the current calendaring system, in place since 1996.

After Lee Powelson's report, Judge Gleason witnessed Judge Postma become angry with an intense facial expression. The intensity startled Judge Gleason because of the speed with which he changed. Similarly, after a clerk was startled by a similar facial expression while on the elevator, Judge Gleason then spoke with Judge Postma about how and why judges need to be very aware and respectful of body language in public. Her relationship with Judge Postma rapidly deteriorated after this conversation. Judge Postma's tone in e-mails has been disrespectful and negative. Other judges expressed frustration because they felt that they covered for Judge Postma without reciprocity. Judge Postma also drew his in-court staff into this conflict and put them in an uncomfortable position.

⁵ Judge Postma did not report any childhood trauma, which is often what creates a dysfunctional pattern of interpersonal relations leading to a "high conflict personality" as an adult.

Judge Postma was offered the temporary position in Palmer because the judges in Palmer specifically asked for him. At one point, when he declined the position, Judge Gleason suggested a rotation for all the District Court Judges to be in Palmer, rather than mandate the position to Judge Postma. In September when Judge Postma stated that he could no longer work in this environment and asked for leave until the Commission investigation concluded, Judge Gleason granted this request with paid administrative leave. She did not suspend Judge Postma. Judge Postma continues to lock into the position that he has been wronged. This thought process permeates every interaction and creates an adversarial relationship. Despite the past difficulties, Judge Gleason believes Judge Postma has a good mind and is a good person. She would like to find a way to get him back on track.

Ann Stockman, Ph.D., has seen Judge Postma in individual and weekly group therapy since October 2, 2009. In general, Judge Postma has low-grade chronic anxiety that increases with situational triggers, i.e. feeling backed into a corner in Anchorage. He holds a diagnosis of Anxiety Disorder NOS and has reported panic attacks, irritability, and hyperarousal. GAF scores in Palmer are 65-70, in Anchorage 50 on a very bad day. No other functional impairments reported outside of work. Judge Postma experienced a similar anxiety reaction after his automobile accident in 2000. The Judge has insight into his anxiety and anger and recognizes that in the moment of emotional overarousal he may not think clearly and he responds quickly. When calm Judge Postma recognizes that he should not have sent the e-mail or responded in that manner. Judge Postma can conceptualize his affect but he does not recognize how his affect is portrayed and that it may be scary for others, such as clerks.

Dr. Stockman has repeatedly evaluated Judge Postma's level of anger and violence risk. He has no history of violence or workplace difficulties. She does not believe he poses a risk of violence or threat of danger to others. He is trying to keep this judicial position, especially since this is the first position held that his father has respected.

Dr. Stockman utilizes mentalization based therapy, which is an attachment based and affect regulation theory. Therapy focuses on anxiety reduction techniques, taking personal responsibility for change and coaching on appropriate interactions (which he can do, at this juncture, in time limited circumstances). Implementation of anxiety de-escalation techniques and recognition of personal affect is progressing.

CONCLUSIONS

Judge Richard Postma, Jr. is a 43 year old, married, right handed, Hispanic male with 19 years of formal education. He was appointed to the District Court in Anchorage, Alaska on August 27, 2007 and has since alleged disparate treatment by calendaring and Judges Gleason and Hanley. On March 10 2010, the Alaska Commission on Judicial Conduct (ACJC) requested an independent psychological evaluation to determine whether any mental health issues impede Judge Postma's capacity and competency to perform the functional duties of a judicial officer and if there exists a potential for behavioral improvement.

According to Presiding Judge Gleason, judicial officers need a threefold ability to work: (1) effectively with the public, (2) with colleagues, especially given a master calendaring system, and (3) with staff. Based on the results of this evaluation, Judge Postma demonstrates superior intellectual ability that allows him to make solid and well-reasoned judicial decisions and have appropriate interactions with the public and attorneys. The relative weaknesses identified in cognitive set shifting and mild perseverative thought appears to be due to his high level of anxiety

and emotional overload rather than an organic etiology (e.g. tumor).⁶ Despite the relative weaknesses, Judge Postma continues to perform at an overall high average to superior level of cognitive functioning. Thus, he has the ability to make judicial decisions and work effectively with the public.

Regarding Judge Postma's ability to work effectively with colleagues and staff, if we evaluate Judge Postma based on his overall reliability and validity, such that he acts in a consistent manner across various settings, then it appears that his fixed belief, negative emotionality and level of emotional distress does not allow him to work effectively with colleagues and staff. Conversely, if we evaluate Judge Postma with accommodations, such that he manages his own time (e.g. controls his own calendar/schedule) and he is in a location away from the center of his fixed belief (e.g. away from Anchorage), then he has demonstrated intact ability to interact effectively with colleagues and staff.

Judge Postma continues to have difficulty controlling his affect and behavior with and about his colleagues and staff in Anchorage. Emails between Judge Postma and Anchorage Judges over the past three months remain confrontational and accusatory⁷ with inaccurate information⁸. Judge Postma maintains the fixed belief that Judges Hanley and Gleason and Ms. Kolberg have mistreated him and will continue to mistreat him.⁹ While childhood events may have primed Judge Postma's sensitivity to situations or issues regarding race and ethnicity, his current belief about his treatment at the court in Anchorage remains exceptionally raw, emotionally charged and unchanging. Perceived racism, whether covert or overt, appears to be a situationally bound trigger that exacerbates his chronic anxiety disorder. While Judge Postma has developed effective coping mechanisms, such as time management skills to handle his anxiety, when faced with additional emotional triggers such as perceived racism or lack of control over workload and schedule, his emotional distress increases, he becomes emotionally over-aroused, he starts to obsess over details and he cannot appropriately regulate his emotions. If afforded accommodations, then Judge Postma appears to have the ability to handle his anxiety and work effectively with colleagues and staff. The ACJC and/or Alaska Court System's ability or willingness to create these accommodations is outside the scope of this report and expertise.

Of note, there has been a concern about Judge Postma's potential for violence. The following factors were weighed and balanced: lack of involvement with the law or disciplinary actions, lack of documented conflict between co-workers or supervisors, lack of substance use/abuse, no past violent behavior, no past psychopathy, personality testing results that indicate passive rather than active hostility with reasonable control over anger and hostility, internal rather than external behavioral symptoms, situational/contextual stressor, owner of a gun with a permit to carry a concealed weapon in Alaska, consistent attendance in psychotherapy, and forthcoming communication. Given the aforementioned factors, I concur with Dr. Stockman that Judge Postma poses a low risk for violence or threat at this time.

Regarding behavioral improvement, as mentioned *supra* under typical daily pressures Judge Postma functions at a high level. When faced with certain situational triggers, some of his anxiety symptoms become unmanageable and in the moment of emotional over-arousal he has difficulty containing his affect. Judge Postma appears to be making some progress in therapy such that he can identify and conceptualize the emotional overload. However, the implementation of his newfound

⁶ If necessary, to rule out a small tumor or insult in his frontal lobe, it is suggested that Judge Postma obtain an MRI.

⁷ E.g. emails dated 04/02/10 re: scheduling Dr. appts, 03/04/10 re: Judge Postma's request for psychological evaluations and barring employees from Boney Courthouse

⁸ E.g. e-mails dated 03/03/10, 04/02/10

⁹ E.g. e-mails from Judge Postma dates 02/04/10, 03/03/10, 03/08/10.

insight requires additional changes to cognitive schemata (structures) before we see substantial changes in affect or behavior. Judge Postma is a good candidate for the type of work he engages in with Dr. Stockman and it is strongly recommended that he continue psychotherapy. Therefore, in answer to the question posed, there is a potential for behavioral improvement, albeit it is a slow process.

Thank you for the opportunity to evaluate this matter. Please do not hesitate to contact me.

Respectfully submitted,



Marnee W. Milner, J.D., Ph.D.

Appendix A: Procedures for the Evaluation

Interview with Judge Postma:

03/24/2010 (2.5 hours)
03/26/2010 (1.0 hours)

Psychological Testing:

History Questionnaire (completed 03/24/2010)
Minnesota Multiphasic Personality Inventory -2 (MMPI-2,
03/24/2010)
Personality Assessment Inventory (PAI, 03/26/2010)

Cognitive Testing:

Wechsler Adult Intelligence Scales (WAIS-IV, 03/26/2010)
Delis-Kaplan Executive Functions Scales, Verbal Fluency and Trail
Making Test (DKEFS, 03/26/2010)
Wechsler Test of Adult Reading (WTAR, 03/26/2010)

Collateral Interviews:

Judge Sharon Gleason, Presiding Judge Third District
(03/25/2010, 0.8)
Judge Patrick Hanley, Deputy Presiding Judge Anchorage
(03/25/2010, 1.0)
Judge Gregory Motyka, District Court Judge Anchorage
(03/25/2010, 0.9; 04/02/2010, 0.2)
Judge Bill Estelle, District Court Judge Palmer
(03/25/2010, 0.5)
Judge Vanessa White, Deputy Presiding Judge Palmer
(03/29/2010, 0.2)
Judge David Zwink, District Court Judge Palmer
(04/02/2010, 0.2)
Judge John Wolfe, District Court Judge Palmer
(04/02/2010, 0.2)
Teresa Shaw, Clerk of the Court Palmer
(03/25/2010, 0.2)
Ann Stockman, Ph.D.
(04/01/2010, 0.5)
Eileen Ha, M.D. (Scheduled appointment to talk 04/07/2010)

Document Review:

1. Notebook from ACJC including: e-mail communications between Judge Postma and other judges and ACJC, Judge Postma medical records (2008-2009), Psychiatric Medical Evaluation and Follow-up, Correspondence between Judge Postma and ACJC, internal ACJC memorandum, complaint by J. Kolberg received 03/05/2009, Lee Powelson's report, Nancy Meade's report pages 1-3, 18-19, EEOC application by Judge Postma, Agreement for Monitoring Pending Complaint Disposition
2. E-mails between Judges Motyka and Postma dated 03/08-09/2010 re: office space
3. District Court Calendaring Grid
4. Memo from Judge Hanley to Judge Clark re: Judge Postma's cases dated 09/10/09
5. Decision on Motion to Suppress dated 11/21/2009
6. Application for Judicial Appointment dated 12/28/2006
7. Judge Postma's response to ACJC and EEOC dated 03/24/2010 with attachments
8. Unsolicited reference from Ms. Ducey to Judicial Council received 08/19/2003
9. E-mail chain from Palmer court clerk re: pot-luck and well wishes
10. Motion to Disqualify 04/04/201



Alaska Commission on Judicial Conduct

1029 W. 3rd Ave., Suite 550, Anchorage, Alaska 99501-1944
(907) 272-1033 In Alaska 800-478-1033 FAX (907) 272-9309


Marla N. Greenstein
Executive Director
E-Mail: mgreensrein@acjc.state.ak.us

Confidential

October 28, 2009

MEMORANDUM

TO: Commission Members

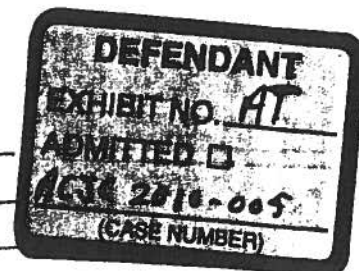
FROM: Marla N. Greenstein
Executive Director 

RE: Medical Records & Court System Personnel Investigation # 2009-004

Medical Records

504

EXHIBIT 3
page 1 of 2
Case No. _____



had an appointment with a therapist on October 6th and the physician notes that he encouraged the judge to keep that appointment.

Personnel Investigation Report

We also received a copy of the Court System's confidential personnel investigation report dated September 30, 2009. I have attached the full version of Human Resources Director, Lee Powelson's initial report, and the opening of the investigative report by Court System Attorney Nancy Meade that summarizes her research and findings. The genesis of both investigations was initiated by Judge Postma's memo last February alleging improper treatment by court staff. That memo led to an investigation by Human Resources staff. That investigation was concluded June 15th. Judge Postma at that point asked that his complaint against fellow District Court Judge Hanley be pursued and that more witnesses be interviewed regarding the previous allegations. Briefly, a thorough investigation followed concluding with a finding that the complaints do not support a legal claim. "Rather, the allegations amount to a series of incidents that illustrate that the working relationship between Judge Postma and the staff of the Calendaring Department is severely strained."

One additional fact raised in both of the court system's investigative reports is extremely troubling. Judge Postma amended his complaint against Jill Kolberg once he found out that she had filed a complaint with our Commission. As Ms. Meade notes in her report: "Ms. Kolberg's filing of the JCC complaint is itself a protected activity.... The judicial officer who is the target of the complaint cannot restrain or in any way chill that right by filing a complaint against the complainant first. To consider Ms. Kolberg's exercise of her right to be unlawful retaliation would be to effectively limit and suppress her right." Of all the judge's actions to date, apart from his general inability to go to work, this is the most serious. It is paramount that judges not interfere with the right of any individual to file a complaint with this office.

I will amend these materials with any additional materials that the judge's attorney, Jeff Feldman, will provide. He knows of our November 12th teleconference date and the need for us to proceed.

MARNEE W. MILNER, J.D., PH.D.
LICENSED PSYCHOLOGIST
CA PSY22741 WA PY3746

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MARNEEMILNER@GMAIL.COM

RECEIVED

APR 26 2010

Alaska Commission
on Judicial Conduct

April 21, 2010

Marla Greenstein, Executive Director
Alaska Commission on Judicial Conduct
1029 West Third Avenue, #550
Anchorage, AK 99501

Dear Ms. Greenstein:

After the telephone conversation with the Commission on Friday April 9 and our subsequent individual and brief conversation on April 13, the following letter will hopefully (1) update the Commission on Dr. Ha's treatment with Judge Postma; (2) clarify a number of points in my report; and (3) provide a DSM-IV diagnosis, which you requested on April 13.

First, I spoke with Dr. Ha for approximately 45 minutes on April 15. As you are aware, Dr. Ha has been Judge Postma's psychiatrist since October 2009. Dr. Ha confirmed that the sleep medications (Ambien and Sonata) do not cause rage and that Judge Postma rarely takes the sleep aides. Overall Judge Postma has been cooperative, compliant and asking for help. His medications have been working well and he feels a little calmer without the high degree of anxiety. Judge Postma's anxiety is situation specific. His anxiety increases when thinking about or discussing the work situation in Anchorage. Judge Postma is somewhat idealistic and has been disappointed with the justice system. He is working on flexibility in thinking and has some insight into his anxiety. Judge Postma has acknowledged that he could have handled a few situations differently (i.e. e-mails) and has become aware of his facial expressions. Judge Postma does not meet any of the risk factors for the potential for violence. Dr. Ha does not know how Judge Postma will manage his level of anxiety if he is constantly challenged or forced to do things he perceives as unjust. Her current working diagnoses are Anxiety Disorder and Adjustment Disorder with Obsessive-Compulsive Personality traits. A more thorough diagnostic formulation is provided at the conclusion of this update.

Second, my understanding from the Commission is that Judge Postma's position is in Anchorage and there is no viable possibility for relocation or flexibility of assignments. In light of this information, Judge Postma's level of anxiety and his fixed belief (his strongly held, non-changing perception and belief) of disparate treatment will continue to impair his ability to interact appropriately within the judicial system in Anchorage. His impairment is likely to impede his ability to function appropriately within the workplace with colleagues, peers and staff. When faced with an emotionally charged trigger, such as racial discrimination, Judge Postma is likely to decompensate and have difficulties with appropriate judgment. Racial issues are likely to be the most direct example of a trigger for his decompensation, and will likely continue to be a destabilizing issue in the future.

Judge Postma's level of anxiety has increased since his return to Anchorage earlier this month (04/05/10). This increase in anxiety will likely continue and eventually impair his ability to function in other situations and circumstances (e.g. at home, with family, with friends, while on the


bench). At this juncture, however, when the subject matter does not involve race or calendaring matters, there has been no data indicating his inability to address complex matters.

Last, you asked that I provide a DSM-IV diagnosis.

Axis I: 300.00 Anxiety Disorder NOS, with panic attacks
Axis II: V71.09 No diagnosis, Obsessive-Compulsive Personality features
Axis III: By report: high blood pressure, low vitamin D, sleep apnea (C-pap)
Axis IV: Work stress, marital discord
Axis V: GAF = 51 (at work in Anchorage)
GAF = 65 (outside of work in Anchorage)

Thank you again for the opportunity to evaluate and provide a clarification in this matter. Please do not hesitate to contact me with further questions.

Sincerely,



Marnee W. Milner, J.D., Ph.D.